

CORPS OF ENGINEERS ENVIRONMENTAL AUTHORITIES FROM
WATER RESOURCE DEVELOPMENT ACTS (WRDA)
1986 THROUGH 2000
AS FOUND IN THE UNITED STATES CODE

Prepared April, 2001

This document contains the provisions of a majority of the major environmental authorities of the Corps of Engineers as found in the United States Code. All but two are located in Title 33, Chapter 36, of the Code:

Title 33 - Navigation and Navigable Waters
 Chapter 36 - Water Resources Development
 Subchapter I - Cost Sharing
 Subchapter II - Harbor Development
 Subchapter III - Inland Waterway Transportation System
 Subchapter IV - Water Resources Studies
 Subchapter V - General Provisions

Chapter 36 contains the Water Resources Development Act (WRDA) of 1986, as amended, and most of the other environmental authorities contained in subsequent WRDAs.

The sections are listed below by their titles in WRDAs. Thus, the U.S. Code sections are not always sequentially numbered and not all Code sections are included, as not all deal with this subject. Several of the sections of WRDAs subsequent to 1986 have amended Subchapter V sections or added new ones. Where subsequent WRDAs have amended existing Code sections, these WRDA sections are not listed separately. The material below also does not include authorities that have terminated. They also do not include authorities that are not at least partially national in scope. A few of the listed authorities are found elsewhere in Title 33, as indicated.

At the time of preparation of this summary, changes made by WRDA 1999 and WRDA 2000 had not yet been incorporated into the U.S. Code sections. Changes made by WRDA 1999 and WRDA 2000 are included in this this summary, but are not specifically noted in the "Amended" sections.

The US Code on line can be accessed at: <http://law2.house.gov> or <http://www.access.gpo.gov/congress/cong013.html>

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Section 704, Water Resources Development Act of 1986, as amended

Study of Corps Capability to Conserve Fish and Wildlife

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER IV - WATER RESOURCES STUDIES**

Section 2263. Study of Corps Capability to Conserve Fish and Wildlife

(a) The Secretary shall investigate and study the feasibility of utilizing the capabilities of the United States Army Corps of Engineers to conserve fish and wildlife (including their habitats) where such fish and wildlife are indigenous to the United States, its possessions, or its territories. The scope of such study shall include the use of engineering or construction capabilities to create alternative habitats, or to improve, enlarge, develop, or otherwise beneficially modify existing habitats of such fish and wildlife. The study shall be conducted in consultation with the Director of the Fish and Wildlife Service of the Department of the Interior, the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, and the Administrator of the Environmental Protection Agency, and shall be transmitted within the 30-month period beginning on November 17, 1986, by the Secretary to Congress, together with the findings, conclusions, and recommendations of the Chief of Engineers. The Secretary, in consultation with the Federal officers referred to in the preceding sentence, shall undertake a continuing review of the matters covered in the study and shall transmit to Congress, on a biennial basis, any revisions to the study that may be required as a result of the review, together with the findings, conclusions, and recommendations of the Chief of Engineers.

(b) The Secretary is further authorized to conduct projects of alternative or beneficially modified habitats for fish and wildlife, including but not limited to man-made reefs for fish. There is authorized to be appropriated not to exceed \$20,000,000 to carry out such projects. Such projects shall be developed, and their effectiveness evaluated, in consultation with the Director of the Fish and Wildlife Service and the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration. Such projects shall include -

- (1) the construction of a reef for fish habitat in Lake Erie in the vicinity of Buffalo, New York;
- (2) the construction of a reef for fish habitat in the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida;

(3) the construction of a reef for fish habitat in Lake Ontario in the vicinity of the town of Newfane, New York; and

(4) the construction of reefs and related clean shell substrate for fish habitat, including manmade 3-dimensional oyster reefs, in the Chesapeake Bay and its tributaries in Maryland and Virginia if the reefs are preserved as permanent sanctuaries by the non-Federal interests, consistent with the recommendations of the scientific consensus document on Chesapeake Bay oyster restoration dated June 1999.

The non-Federal share of the cost of any project under this section shall be 25 percent. In carrying out paragraph (4), the Chief of Engineers may solicit participation by and the services of commercial watermen in the construction of the reefs.

SOURCE

(Pub. L. 99-662, title VII, Sec. 704, Nov. 17, 1986, 100 Stat. 4157; Pub. L. 104-303, title V, Sec. 505, Oct. 12, 1996, 110 Stat. 3757.)

AMENDMENTS

1996 - Subsec. (b). Pub. L. 104-303 substituted "\$7,000,000" for "\$5,000,000" in introductory provisions and inserted "and Virginia" after "Maryland" in par. (4).

Section 906, Water Resources Development Act of 1986, as amended

Fish and Wildlife Mitigation

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2283. Fish and Wildlife Mitigation

(a) Steps to be taken prior to or concurrently with construction

(1) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after November 17, 1986, construction of which has not commenced as of November 17, 1986, and which necessitates the mitigation of fish and wildlife losses, including the acquisition of lands or interests in lands to mitigate losses to fish and wildlife, as a result of such project, such mitigation, including acquisition of the lands or interests -

(A) shall be undertaken or acquired before any construction of the project (other than such acquisition) commences, or

(B) shall be undertaken or acquired concurrently with lands and interests in lands for project purposes (other than mitigation of fish and wildlife losses),

whichever the Secretary determines is appropriate, except that any physical construction required for the purposes of mitigation may be undertaken concurrently with the physical construction of such project.

(2) For the purposes of this subsection, any project authorized before November 17, 1986, on which more than 50 percent of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

(b) Acquisition of lands or interests in lands for mitigation

(1) After consultation with appropriate Federal and non-Federal agencies, the Secretary is authorized to mitigate damages to fish and wildlife resulting from any water resources project under his jurisdiction, whether completed, under construction, or to be constructed. Such mitigation may include the acquisition of lands, or interests therein, except that -

(A) acquisition under this paragraph shall not be by condemnation in the case of projects completed as of November 17, 1986, or on which at least 10 percent of the physical construction on the project has been completed as of November 17, 1986; and

(B) acquisition of water, or interests therein, under this paragraph, shall not be by condemnation.

The Secretary, shall, under the terms of this paragraph, obligate no more than \$30,000,000 in any fiscal year. With respect to any water resources project, the authority under this subsection shall not apply to measures that cost more than \$7,500,000 or 10 percent of the cost of the project, whichever is greater.

(2) Whenever, after his review, the Secretary determines that such mitigation features under this subsection are likely to require condemnation under subparagraph (A) or (B) of paragraph (1) of this subsection, the Secretary shall transmit to Congress a report on such proposed modification, together with his recommendations.

(c) Allocation of mitigation costs

Costs incurred after November 17, 1986, including lands, easements, rights-of-way, and relocations, for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures, and shall be subject to cost sharing or reimbursement to the same extent as such other project costs are shared or reimbursed, except that when such costs are covered by contracts entered into prior to November 17, 1986, such costs shall not be recovered without the consent of the non-Federal interests or until such contracts are complied with or renegotiated.

(d) Mitigation plans as part of project proposals

(1) In General, after November 17, 1986, the Secretary shall not Submit any proposal for the authorization of any water resources project to the Congress unless such report contains

(A) a recommendation with a specific plan to mitigate fish and wildlife losses created by such project, or

(B) a determination by the Secretary that such project will have negligible adverse impact on fish and wildlife.

Specific mitigation plans shall ensure that impacts to bottomland hardwood forests are mitigated in-kind, to the extent possible. In carrying out this subsection, the Secretary shall consult with appropriate Federal and non-Federal agencies.

(2) DESIGN OF MITIGATION PROJECTS-The Secretary shall design mitigation projects to reflect contemporary understanding of the science of mitigating the adverse environmental impacts of water resources projects. [NOTE: per P.L. 106-541, sec. 224,

(b) CONCURRENT MITIGATION-

(1) INVESTIGATION-

(A) IN GENERAL- The Comptroller General shall conduct an investigation of the effectiveness of the concurrent mitigation

requirements of section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283). In carrying out the investigation, the Comptroller General shall determine--

(i) whether or not there are instances in which less than 50 percent of required mitigation is completed before initiation of project construction and the number of such instances; and

(ii) the extent to which mitigation projects restore natural hydrologic conditions, restore native vegetation, and otherwise support native fish and wildlife species.

(B) SPECIAL RULE- In carrying out subparagraph (A)(ii), the Comptroller General shall--

(i) establish a panel of independent scientists, comprised of individuals with expertise and experience in applicable scientific disciplines, to assist the Comptroller General; and

(ii) assess methods used by the Corps of Engineers to monitor and evaluate mitigation projects, and compare Corps of Engineers mitigation project design, construction, monitoring, and evaluation practices with those used in other publicly and privately financed mitigation projects.

(2) REPORT- Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report on the results of the investigation.

(e) First enhancement costs as Federal costs

In those cases when the Secretary, as part of any report to Congress, recommends activities to enhance fish and wildlife resources, the first costs of such enhancement shall be a Federal cost when -

(1) such enhancement provides benefits that are determined to be national, including benefits to species that are identified by the National Marine Fisheries Service as of national economic importance, species that are subject to treaties or international convention to which the United States is a party, and anadromous fish;

(2) such enhancement is designed to benefit species that have been listed as threatened or endangered by the Secretary of the Interior under the terms of the Endangered Species Act, as amended (16 U.S.C. 1531, et seq.), or

(3) such activities are located on lands managed as a national wildlife refuge.

When benefits of enhancement do not qualify under the preceding sentence, 25 percent of such first costs of enhancement shall be provided by non-Federal interests under a schedule of reimbursement determined by the Secretary. Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out

the enhancement project. The non-Federal share of operation, maintenance, and rehabilitation of activities to enhance fish and wildlife resources shall be 25 percent.

(f) National benefits from enhancement measures for Atchafalaya Floodway System and Mississippi Delta Region projects

Fish and wildlife enhancement measures carried out as part of the project for Atchafalaya Floodway System, Louisiana, authorized by Public Law 99-88, and the project for Mississippi Delta Region, Louisiana, authorized by the Flood Control Act of 1965, shall be considered to provide benefits that are national for purposes of this section.

(g) Fish and Wildlife Coordination Act supplementation

The provisions of subsections (a), (b), and (d) of this section shall be deemed to supplement the responsibility and authority of the Secretary pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and nothing in this section is intended to affect that Act.

SOURCE

(Pub. L. 99-662, title IX, Sec. 906, Nov. 17, 1986, 100 Stat. 4186; Pub. L. 102-580, title III, Sec. 333(a), Oct. 31, 1992, 106 Stat. 4852.)

REFERENCES IN TEXT

The Endangered Species Act, as amended, referred to in subsec. (e)(2), probably means the Endangered Species Act of 1973, Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (Sec. 1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

Public Law 99-88, referred to in subsec. (f), is Pub. L. 99-88, Aug. 15, 1985, 99 Stat. 293, known as the Supplemental Appropriations Act, 1985. Provisions of Pub. L. 99-88 authorizing the project for the Atchafalaya Floodway System, Louisiana, are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Flood Control Act of 1965, referred to in subsec. (f), is title II of Pub. L. 89-298, Oct. 27, 1965, 79 Stat. 1073.

Provisions of that Act authorizing the project for Mississippi Delta Region, Louisiana, are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Fish and Wildlife Coordination Act referred to in subsec. (g), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, as amended, which is classified generally to sections 661 to 666c of Title 16,

Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 16 and Tables.

AMENDMENTS

1992 - Subsec. (c). Pub. L. 102-580 inserted ", including lands, easements, rights-of-way, and relocations," before "for implementation and operation".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 652, 2211, 2213 of this title.

Section 907, Water Resources Development Act of 1986, as amended

Benefits and Costs Attributable to Environmental Measures

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS

Sec. 2284. Benefits and Costs Attributable to Environmental Measures

In the evaluation by the Secretary of benefits and costs of a water resources project, the benefits attributable to measures included in a project for the purpose of environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed to be at least equal to the costs of such measures.

SOURCE

(Pub. L. 99-662, title IX, Sec. 907, Nov. 17, 1986, 100 Stat. 4188.)

Section 908, Water Resources Development Act of 1986

Environmental Protection and Mitigation Fund

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CHAPTER 36 - WATER RESOURCES DEVELOPMENT SUBCHAPTER V - GENERAL PROVISIONS

Sec. 2285. Environmental Protection and Mitigation Fund

There is established an Environmental Protection and Mitigation Fund. There is authorized to be appropriated to such fund \$35,000,000 for fiscal years beginning after September 30, 1986. Amounts in the fund (FOOTNOTE 1) shall be available for undertaking, in advance of construction of any water resources project authorized to be constructed by the Secretary, such measures authorized as part of such project, including the acquisition of lands and interests therein, as may be necessary to ensure that project-induced losses to fish and wildlife production and habitat will be mitigated. The Secretary shall reimburse the Fund for any amounts expended under this section for a water resources project from the first appropriations made for construction, including planning and designing, of such project.

(FOOTNOTE 1) So in original. Probably should be capitalized.

-SOURCE-

(Pub. L. 99-662, title IX, Sec. 908, Nov. 17, 1986, 100 Stat. 4188.)

Section 924, Water Resources Development Act of 1986, as amended

Office of Environmental Policy

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2294. Office of Environmental Policy

The Secretary shall establish in the Directorate of Civil Works of the Office of the Chief of Engineers an Office of Environmental Policy. Such Office shall be responsible for the formulation, coordination, and implementation of all matters concerning environmental quality and policy as they relate to the water resources program of the United States Army Corps of Engineers. Such Office shall, among other things, develop, and monitor compliance with, guidelines for the consideration of environmental quality in formulation and planning of water resources projects carried out by the Secretary, the preparation and coordination of environmental impact statements for such projects, and the coordination with Federal, State, and local agencies of environmental aspects of such projects and regulatory responsibilities of the Secretary.

SOURCE

(Pub. L. 99-662, title IX, Sec. 924, Nov. 17, 1986, 100 Stat. 4194.)

Section 943, Water Resources Development Act of 1986, as amended

Historical Properties

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2303. Historical Properties

The Secretary is authorized to preserve, restore, and maintain those historic properties located on water resource development project lands under the jurisdiction of the Department of the Army if such properties have been entered into the National Register of Historic Places.

SOURCE

(Pub. L. 99-662, title IX, Sec. 943, Nov. 17, 1986, 100 Stat. 4200.)

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Section 1135, Water Resources Development Act of 1986, as amended

Project Modifications for Improvement of Environment

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2309a. Project Modifications for Improvement of Environment

(a) Determination of need

The Secretary is authorized to review water resources projects constructed by the Secretary to determine the need for modifications in the structures and operations of such projects for the purpose of improving the quality of the environment in the public interest and to determine if the operation of such projects has contributed to the degradation of the quality of the environment.

(b) Authority to make modifications

The Secretary is authorized to carry out a program for the purpose of making such modifications in the structures and operations of water resources projects constructed by the Secretary which the Secretary determines (1) are feasible and consistent with the authorized project purposes, and (2) will improve the quality of the environment in the public interest.

(c) Restoration of environmental quality

(1) IN GENERAL- if the Secretary determines that construction of a water resources project by the Secretary or operation of a water resources project constructed by the Secretary has contributed to the degradation of the quality of the environment, the Secretary may undertake measures for restoration of environmental quality and measures for enhancement of environmental quality that are associated with the restoration, through modifications either at the project site or at other locations that have been affected by the construction or operation of the project, if such measures do not conflict with the authorized project purposes.

(2) CONTROL OF SEA LAMPREY - Congress finds that-

(A) the Great Lakes navigation system has been instrumental in the spread of sea lamprey and the associated impacts on its fishery; and

(B) the use of the authority under this subsection for control of sea lamprey at any Great Lakes basin location is appropriate.

(d) Non-Federal share; limitation on maximum Federal expenditure

The non-Federal share of the cost of any modifications or measures carried out or undertaken pursuant to subsection (b) or (c) of this section shall be 25 percent. Not more than 80 percent

of the non-Federal share may be in kind, including a facility, supply, or service that is necessary to carry out the modification or measure. Not more than \$5,000,000 in Federal funds may be expended on any single modification or measure carried out or undertaken pursuant to this section.

(e) Coordination of actions

The Secretary shall coordinate any actions taken pursuant to this section with appropriate Federal, State, and local agencies.

(f) Biennial report

Beginning in 1992 and every 2 years thereafter, the Secretary shall transmit to Congress a report on the results of reviews conducted under subsection (a) of this section and on the programs conducted under subsections (b) and (c) of this section.

(g) NONPROFIT ENTITIES.-

Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity with the consent of the affected local government.

(h) Authorization of appropriations

There is authorized to be appropriated not to exceed \$25,000,000 annually to carry out this section.

(i) Definition

In this section, the term "water resources project constructed by the Secretary" includes a water resources project constructed or funded jointly by the Secretary and the of any other Federal agency (including the Natural Resources Conservation Service).

SOURCE

(Pub. L. 99-662, title XI, Sec. 1135, Nov. 17, 1986, 100 Stat. 4251; Pub. L. 100-676, Sec. 41, Nov. 17, 1988, 102 Stat. 4040; Pub. L. 101-640, title III, Sec. 304, Nov. 28, 1990, 104 Stat. 4634; Pub. L. 102-580, title II, Sec. 202, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104-303, title II, Sec. 204, Oct. 12, 1996, 110 Stat. 3678.)

CODIFICATION

Section was formerly set out as a note under section 2294 of this title.

AMENDMENTS

1996 - Subsec. (a). Pub. L. 104-303, Sec. 204(a), struck out "the operation of" after "to review" and inserted before period at end "and to determine if the operation of such projects has contributed to the degradation of the quality of the environment".

Subsec. (b). Pub. L. 104-303, Sec. 204(b), struck out at end "The non-Federal share of the cost of any modifications carried out under this section shall be 25 percent. No modification shall be carried out under this section without specific authorization by Congress if the estimated cost exceeds \$5,000,000."

Subsecs. (c), (d). Pub. L. 104-303, Sec. 204(c)(2), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 104-303, Sec. 204(c)(1), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 104-303, Sec. 204(c)(1), (3), redesignated subsec. (d) as (f) and substituted "programs conducted under subsections (b) and (c) of this section" for "program conducted under subsection (b) of this section".

Subsec. (g). Pub. L. 104-303, Sec. 204(c)(1), redesignated subsec. (e) as (g).

Subsec. (h). Pub. L. 104-303, Sec. 204(d), added subsec. (h).

1992 - Subsec. (b). Pub. L. 102-580, Sec. 202(1), inserted at end "No modification shall be carried out under this section without specific authorization by Congress if the estimated cost exceeds \$5,000,000."

Subsec. (e). Pub. L. 102-580, Sec. 202(2), substituted "\$25,000,000" for "\$15,000,000".

1990 - Subsec. (a). Pub. L. 101-640, Sec. 304(a), struck out "before the date of enactment of this Act" after "constructed by the Secretary".

Subsec. (b). Pub. L. 101-640, Sec. 304(b), substituted "program" for "demonstration program in the 5-year period beginning on the date of enactment of this Act" and struck out "before the date of enactment of this Act" after "constructed by the Secretary".

Subsec. (d). Pub. L. 101-640, Sec. 304(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Not later than 5 years after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the review conducted under subsection (a) and on the demonstration program conducted under subsection (b). Such report shall contain any recommendations of the Secretary concerning modification and extension of such program."

Subsec. (e). Pub. L. 101-640, Sec. 304(d), substituted "\$15,000,000 annually to carry out this section" for "\$25,000,000 to carry out this section".

1988 - Subsec. (b). Pub. L. 100-676, Sec. 41(a), substituted "5-year period" for "two-year period".

Subsec. (d). Pub. L. 100-676, Sec. 41(b), substituted "5 years"

for "two years".

Section 8, Water Resources Development Act of 1988, as amended

Innovative Technology

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CHAPTER 36 - WATER RESOURCES DEVELOPMENT SUBCHAPTER V - GENERAL PROVISIONS

Sec. 2314. Innovative Technology

(a) Use

The Secretary shall, whenever feasible, seek to promote long- and short-term cost savings, increased efficiency, reliability, and safety, and improved environmental results through the use of innovative technology in all phases of water resources development projects and programs under the Secretary's jurisdiction. To further this goal, Congress encourages the Secretary to -

(1) use procurement and contracting procedures that encourage innovative project design, construction, rehabilitation, repair, and operation and maintenance technologies;

(2) frequently review technical and design criteria to remove or modify unnecessary impediments to innovation;

(3) increase timely exchange of technical information with universities, private companies, government agencies, and individuals;

(4) foster design competition; and

(5) encourage greater participation by non-Federal project sponsors in the development and implementation of projects.

(b) Accelerated adoption of innovative technologies for management of contaminated sediments

(1) Test projects

The Secretary shall approve an appropriate number of projects to test, under actual field conditions, innovative technologies for environmentally sound management of contaminated sediments.

(2) Demonstration projects

The Secretary may approve an appropriate number of projects to demonstrate innovative technologies that have been pilot tested under paragraph (1).

(3) Conduct of projects

Each pilot project under paragraph (1) and demonstration project under paragraph (2) shall be conducted by a university with proven expertise in the research and development of contaminated sediment treatment technologies and innovative applications using waste materials.

(4) Location

At least 1 of the projects under this subsection shall be conducted in New England by the University of New Hampshire.

(c) Reports

Within 2 years after November 17, 1988, and thereafter at the

Secretary's discretion, the Secretary shall provide Congress with a report on the results of, and recommendations to increase, the development and use of innovative technology in water resources development projects under the Secretary's jurisdiction. Such report shall also contain information regarding innovative technologies which the Secretary has considered and rejected for use in water resources development projects under the Secretary's jurisdiction.

(d) "Innovative technology" defined

For the purpose of this section, the term "innovative technology" means designs, materials, or methods which the Secretary determines are previously undemonstrated or are too new to be considered standard practice.

SOURCE

(Pub. L. 100-676, Sec. 8, Nov. 17, 1988, 102 Stat. 4023; Pub. L. 106-53, title V, Sec. 503(b), Aug. 17, 1999, 113 Stat. 337.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1988, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1999 - Subsecs. (b) to (d). Pub. L. 106-53 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

REVIEW OF INNOVATIVE DREDGING TECHNOLOGIES

Pub. L. 106-53, title V, Sec. 503(a), Aug. 17, 1999, 113 Stat. 337, provided that:

"(1) In general. - Not later than June 1, 2001, the Secretary shall complete a review of innovative dredging technologies designed to minimize or eliminate contamination of a water column upon removal of contaminated sediments.

"(2) Testing. -

"(A) Selection of technology. - After completion of the review

under paragraph (1), the Secretary shall select, from among the technologies reviewed, the technology that the Secretary determines will best increase the effectiveness of removing contaminated sediments and significantly reduce contamination of the water column.

"(B) Agreement. - Not later than December 31, 2001, the Secretary shall enter into an agreement with a public or private entity to test the selected technology in the vicinity of Peoria Lakes, Illinois.

"(3) Authorization of appropriations. - There is authorized to be appropriated to carry out this subsection \$2,000,000.'

BENEFICIAL USE OF WASTE TIRE RUBBER

Pub. L. 106-53, title V, Sec. 561, Aug. 17, 1999, 113 Stat. 355, provided that:

"(a) In General. - The Secretary shall, when appropriate, encourage the beneficial use of waste tire rubber (including crumb rubber and baled tire products) recycled from tires.

"(b) Included Beneficial Uses. - Beneficial uses under subsection (a) may include marine pilings, underwater framing, floating docks with built-in flotation, utility poles, and other uses associated with transportation and infrastructure projects receiving Federal funds.

"(c) Use of Waste Tire Rubber. - The Secretary shall encourage the use, when appropriate, of waste tire rubber (including crumb rubber) in projects described in subsection (b)."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 100-676, set out as a note under section 2201 of this title.

Section 306 of the Water Resources Development Act of 1990, as amended.

Environmental Protection Mission

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2316. Environmental Protection Mission

(a) General rule

The Secretary shall include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining water resources projects.

(b) Limitation

Nothing in this section affects -

- (1) existing Corps of Engineers' authorities, including its authorities with respect to navigation and flood control;
- (2) pending Corps of Engineers permit applications or pending lawsuits involving permits or water resources projects; or
- (3) the application of public interest review procedures for Corps of Engineers permits.

SOURCE

(Pub. L. 101-640, title III, Sec. 306, Nov. 28, 1990, 104 Stat. 4635.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

Section 307, Water Resources Development Act of 1990, as amended.

Wetlands

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2317. Wetlands

(a) Goals and action plan

(1) Goals

There is established, as part of the Corps of Engineers water resources development program, an interim goal of no overall net loss of the Nation's remaining wetlands base, as defined by acreage and function, and a long-term goal to increase the quality and quantity of the Nation's wetlands, as defined by acreage and function.

(2) Use of authorities

The Secretary shall utilize all appropriate authorities, including those to restore and create wetlands, in meeting the interim and long-term goals.

(3) Action plan

(A) Development

The Secretary shall develop, in consultation with the Environmental Protection Agency, the Fish and Wildlife Service, and other appropriate Federal agencies, a wetlands action plan to achieve the goals established by this subsection as soon as possible.

(B) Contents

The plan shall include and identify actions to be taken by the Secretary in achieving the goals and any new authorities which may be necessary to accelerate attainment of the goals.

(C) Completion deadline

The Secretary shall complete the plan not later than 1 year after November 28, 1990.

(b) Constructed wetlands for Mud Creek, Arkansas

Notwithstanding any other provision of law, the Secretary is authorized and directed to establish and carry out a research and pilot project to evaluate and demonstrate -

(1) the use of constructed wetlands for wastewater treatment, and

(2) methods by which such projects contribute -

(A) to meeting the objective of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) to restore and maintain

the physical, chemical, and biological integrity of the Nation's waters, and

(B) to attaining the goals established by subsection (a) of this section.

The project under this subsection shall be carried out to improve the quality of effluent discharged from publicly owned treatment works operated by the city of Fayetteville, Arkansas, into Mud Creek or its tributaries.

(c) Non-Federal responsibilities

For the project conducted under subsection (b) of this section, the non-Federal interest shall agree -

(1) to provide, without cost to the United States, all lands, easements, rights-of-way, relocations, and dredged material disposal areas necessary for construction and subsequent research and demonstration work;

(2) to hold and save the United States free from damages due to construction, operation, and maintenance of the project, except damages due to the fault or negligence of the United States or its contractors; and

(3) to operate and maintain the restored or constructed wetlands in accordance with good management practices; except that nothing in this paragraph shall be construed as precluding a Federal agency from agreeing to operate and maintain the restored or reconstructed wetlands.

The value of the non-Federal lands, easements, rights-of-way, relocations, and dredged material disposal areas provided by the non-Federal interest shall be credited toward the non-Federal share of project design and construction costs. The non-Federal share of project design and construction costs shall be 25 percent.

(d) Wetlands restoration and enhancement demonstration program

(1) Establishment and implementation

The Secretary, in consultation with the Administrator, is authorized to establish and implement a demonstration program for the purpose of determining the feasibility of wetlands restoration, enhancement, and creation as a means of contributing to the goals established by subsection (a) of this section.

(2) Goal

The goal of the program under this subsection shall be to establish a limited number of demonstration wetlands restoration, enhancement, and creation areas in districts of the Corps of Engineers for the purpose of evaluating the technical and scientific long-term feasibility of such areas as a means of contributing to the attainment of the goals established by subsection (a) of this section. Federal and State land-owning agencies and private parties may contribute to such areas.

(3) Factors to consider

In establishing the demonstration program under this subsection, the Secretary shall consider -

(A) past experience with wetlands restoration, enhancement, and creation;

(B) the appropriate means of measuring benefits of compensatory mitigation activities, including enhancement or restoration of existing wetlands or creation of wetlands;

(C) the appropriate geographic scope for which wetlands loss may be offset by restoration, enhancement, and creation efforts;

(D) the technical feasibility and scientific likelihood that wetlands can be successfully restored, enhanced, and created;

(E) means of establishing liability for, and long-term ownership of, wetlands restoration, enhancement, and creation areas; and

(F) responsibilities for short- and long-term project monitoring.

(4) Reporting

(A) To the Chief of Engineers

The district engineer for each district of the Corps of Engineers in which a wetlands restoration, enhancement, and creation area is established under this subsection shall transmit annual reports to the Chief of Engineers describing the amount and value of wetlands restored, enhanced, and created for the area and a summary of whether the area is contributing to the goal established in paragraph (2).

(B) To Congress

Not later than 3 years after November 28, 1990, the Secretary shall transmit to Congress a report evaluating the use of wetlands restoration, enhancement, and creation areas in fulfilling the goal established by paragraph (2), together with recommendations on whether or not to continue use of such areas as a means of meeting the goals established by subsection (a) of this section.

(5) Effect on other laws

Nothing in this subsection affects any requirements under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 403 of this title.

(e) Training and certification of delineators

(1) In general

The Secretary is authorized to establish a program for the training and certification of individuals as wetlands delineators. As part of such program, the Secretary shall carry out demonstration projects in districts of the Corps of

Engineers. The program shall include training and certification of delineators and procedures for expediting consideration and acceptance of delineations performed by certified delineators.

(2) Reports

The Secretary shall transmit to Congress periodic reports concerning the status of the program and any recommendations on improving the content and implementation of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

SOURCE

(Pub. L. 101-640, title III, Sec. 307, Nov. 28, 1990, 104 Stat. 4635.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (b)(2)(A), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (Sec. 1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

WETLANDS ENHANCEMENT OPPORTUNITIES

Section 409 of Pub. L. 101-640 provided that: "Not later than January 20, 1992, the Secretary shall transmit to Congress a list which specifically identifies opportunities of enhancing wetlands in connection with construction and operation of water resource projects."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

Section 312, Water Resources Development Act of 1990, as amended.

Environmental Dredging

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL
SUBCHAPTER I - RESEARCH AND RELATED PROGRAMS**

Sec. 1272. Environmental Dredging

(a) Operation and maintenance of navigation projects

Whenever necessary to meet the requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Secretary, in consultation with the Administrator of the Environmental Protection Agency, may remove and remediate, as part of operation and maintenance of a navigation project, contaminated sediments outside the boundaries of and adjacent to the navigation channel.

(b) Nonproject specific

(1) In general

The Secretary may remove and remediate contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement if such removal and remediation is requested by a non-Federal sponsor and the sponsor agrees to pay 35 percent of the cost of such removal and remediation.

(2) Maximum amount

The Secretary may not expend more than \$50,000,000 in a fiscal year to carry out this subsection.

(c) Joint plan requirement

The Secretary may only remove and remediate contaminated sediments under subsection (b) of this section in accordance with a joint plan developed by the Secretary and interested Federal, State, and local government officials. Such plan must include an opportunity for public comment, a description of the work to be undertaken, the method to be used for dredged material disposal, the roles and responsibilities of the Secretary and non-Federal sponsors, and identification of sources of funding.

(d) Disposal costs

Costs of disposal of contaminated sediments removed under this section shall be shared as a cost of construction.

(e) Limitation on statutory construction

Nothing in this section shall be construed to affect the rights and responsibilities of any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(f) Priority work

In carrying out this section, the Secretary shall give priority to work in the following areas:

- (1) Brooklyn Waterfront, New York.
- (2) Buffalo Harbor and River, New York.
- (3) Ashtabula River, Ohio.
- (4) Mahoning River, Ohio.
- (5) Lower Fox River, Wisconsin.
- (6) Passaic River and Neward Bay, New Jersey.
- (7) Snake Creek, Bixby, Oklahoma
- (8) Willamette River, Oregon

(g) Nonprofit Entities.

Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal sponsor may include a nonprofit entity, with the consent of the affected local government.

SOURCE

(Pub. L. 101-640, title III, Sec. 312, Nov. 28, 1990, 104 Stat. 4639; Pub. L. 104-303, title II, Sec. 205, Oct. 12, 1996, 110 Stat. 3679.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter (Sec. 1251 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (e), is Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (Sec. 9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

CODIFICATION

Section was formerly set out as a note under section 1252 of this title.

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Federal Water Pollution Control

Act which comprises this chapter.

AMENDMENTS

1996 - Subsec. (a). Pub. L. 104-303, Sec. 205(1), inserted "and remediate" after "remove".

Subsec. (b)(1). Pub. L. 104-303, Sec. 205(1), (2)(A), inserted "and remediate" after "remove" and inserted "and remediation" after "removal" in two places.

Subsec. (b)(2). Pub. L. 104-303, Sec. 205(2)(B), substituted "\$20,000,000" for "\$10,000,000".

Subsec. (c). Pub. L. 104-303, Sec. 205(1), inserted "and remediate" after "remove".

Subsec. (f). Pub. L. 104-303, Sec. 205(3), added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: "This section shall not be effective after the last day of the 5-year period beginning on November 28, 1990; except that the Secretary may complete any project commenced under this section on or before such last day."

Section 313, Water Resources Development Act of 1990, as amended.

Protection of Recreational and Commercial Uses

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2320. Protection of Recreational and Commercial Uses

(a) General rule

In planning any water resources project, the Secretary shall consider the impact of the project on existing and future recreational and commercial uses in the area surrounding the project.

(b) Maintenance

Whenever the Secretary maintains, repairs, rehabilitates, or reconstructs a water resources project which will result in a change in the configuration of a structure which is a part of such project, the Secretary, to the maximum extent practicable, shall carry out such maintenance, repair, rehabilitation, or reconstruction in a manner which will not adversely affect any recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction.

(c) Mitigation

(1) In general

If maintenance, repair, rehabilitation, or reconstruction of a water resources project by the Secretary results in a change in the configuration of any structure which is a part of such project and has an adverse effect on a recreational use established with respect to such project before the date of such maintenance, repair, rehabilitation, or reconstruction, the Secretary, to the maximum extent practicable, shall take such actions as may be necessary to restore such recreational use or provide alternative opportunities for comparable recreational use.

(2) Maximum amount

The Secretary may not expend more than \$2,000,000 in a fiscal year to carry out this subsection.

(3) Termination date

This subsection shall not be effective after the last day of the 5-year period beginning on November 28, 1990; except that the Secretary may complete any restoration commenced under this

subsection on or before such last day.

(d) Applicability

(1) General rule

Subsections (b) and (c) of this section shall apply to maintenance, repair, rehabilitation, or reconstruction for which physical construction is initiated after May 1, 1988.

(2) Limitation

Subsections (b) and (c) of this section shall not apply to any action of the Secretary which is necessary to discontinue the operation of a water resources project.

(e) Cost sharing

Costs incurred by the Secretary to carry out the objectives of this section shall be allocated to recreation and shall be payable by the beneficiaries of the recreation.

SOURCE

(Pub. L. 101-640, title III, Sec. 313, Nov. 28, 1990, 104 Stat. 4640.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

Section 203, Water Resources Development Act of 1992, as amended.

Voluntary Contributions for Environmental and Recreation Projects

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2325. Voluntary Contributions for Environmental and Recreation Projects

(a) Acceptance

In connection with carrying out a water resources project for environmental protection and restoration or a water resources project for recreation, the Secretary is authorized to accept contributions of cash, funds, materials, and services from persons, including governmental entities but excluding the project sponsor.

(b) Deposit

Any cash or funds received by the Secretary under subsection (a) of this section shall be deposited into the account in the Treasury of the United States entitled "Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)" and shall be available until expended to carry out water resources projects described in subsection (a) of this section.

SOURCE

(Pub. L. 102-580, title II, Sec. 203, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104-303, title II, Sec. 236(a), Oct. 12, 1996, 110 Stat. 3705.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1996 - Subsec. (b). Pub. L. 104-303 substituted "(8862)" for "(8662)".

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

Section 204, Water Resources Development Act of 1992, as amended.

Beneficial Uses of Dredged Material

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2326. Beneficial Uses of Dredged Material

(a) In general

The Secretary is authorized to carry out projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with dredging for construction, operation, or maintenance by the Secretary of an authorized navigation project.

(b) Secretarial findings

Subject to subsection (c) of this section, projects for the protection, restoration, or creation of aquatic and ecologically related habitats may be undertaken in any case where the Secretary finds that -

(1) the environmental, economic, and social benefits of the project, both monetary and nonmonetary, justify the cost thereof; and

(2) the project would not result in environmental degradation.

(c) Cooperative agreement

Any project undertaken pursuant to this section shall be initiated only after non-Federal interests have entered into a Binding agreement with the Secretary in which the non-Federal interests agree to -

(1) provide 25 percent of the cost associated with construction of the project for the protection, restoration, and creation of aquatic and ecologically related habitats, including provision of all lands, easements, rights-of-way, and necessary relocations; and

(2) pay 100 percent of the operation, maintenance, replacement, and rehabilitation costs associated with the project for the protection, restoration, and creation of aquatic and ecologically related habitats.

(d) Determination of construction costs

Costs associated with construction of a project for the protection, restoration, and creation of aquatic and ecologically related habitats shall be limited solely to construction costs which are in excess of those costs necessary to carry out the

dredging for construction, operation, or maintenance of the authorized navigation project in the most cost effective way, consistent with economic, engineering, and environmental criteria.

(e) Selection of dredged material disposal method

In developing and carrying out a project for navigation involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest, a disposal method that is not the least-cost option if the Secretary determines that the incremental costs of such disposal method are reasonable in relation to the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion. The Federal share of such incremental costs shall be determined in accordance with subsection (c) of this section.

(f) Authorization of appropriations

There is authorized to be appropriated not to exceed \$15,000,000 annually to carry out this section. Such sums shall remain available until expended.

(g) NONPROFIT ENTITIES.--

Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government.

SOURCE

(Pub. L. 102-580, title II, Sec. 204, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104-303, title II, Sec. 207, Oct. 12, 1996, 110 Stat. 3680.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1996 - Subsecs. (e), (f). Pub. L. 104-303 added subsec. (e) and redesignated former subsec. (e) as (f).

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2326a of this title.

Section 225, Water Resources Development Act of 1992, as amended.

Challenge Cost-sharing Program for Management of Recreation Facilities

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

**Sec. 2328. Challenge Cost-sharing Program for Management of
Recreation Facilities**

(a) In general

The Secretary is authorized to develop and implement a program to share the cost of managing recreation facilities and natural resources at water resource development projects under the Secretary's jurisdiction.

(b) Cooperative agreements

To implement the program under this section, the Secretary is authorized to enter into cooperative agreements with non-Federal public and private entities to provide for operation and management of recreation facilities and natural resources at civil works projects under the Secretary's jurisdiction where such facilities and resources are being maintained at complete Federal expense.

(c) Contributions

For purposes of carrying out this section the Secretary may accept contributions of funds, materials, and services from non-Federal public and private entities. Any funds received by the Secretary under this section shall be deposited into the account in the Treasury of the United States entitled "Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)" and shall be available until expended to carry out the purposes of this section.

SOURCE

(Pub. L. 102-580, title II, Sec. 225, Oct. 31, 1992, 106 Stat. 4838; Pub. L. 104-303, title II, Sec. 236(b), Oct. 12, 1996, 110 Stat. 3705.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

1996 - Subsec. (c). Pub. L. 104-303 substituted "(8862)" for "(8662)".

RECREATION PARTNERSHIP INITIATIVE

Section 519 of Pub. L. 104-303 provided that:

"(a) In General. - The Secretary shall promote Federal, non-Federal, and private sector cooperation in creating public recreation opportunities and developing the necessary supporting infrastructure at water resources projects of the Corps of Engineers.

"(b) Infrastructure Improvements. -

"(1) Recreation infrastructure improvements. - In determining the feasibility of the public-private cooperative under subsection (a), the Secretary shall provide such infrastructure improvements as are necessary to support a potential private recreational development at the Raystown Lake Project, Pennsylvania, generally in accordance with the Master Plan Update (1994) for the project.

"(2) Agreement. - The Secretary shall enter into an agreement with an appropriate non-Federal public entity to ensure that the infrastructure improvements constructed by the Secretary on non-project lands pursuant to paragraph (1) are transferred to and operated and maintained by the non-Federal public entity.

"(3) Authorization of appropriations. - There is authorized to be appropriated to carry out this subsection \$3,000,000.

"(c) Report. - Not later than December 31, 1998, the Secretary shall transmit to Congress a report on the results of the cooperative efforts carried out under this section, including the improvements required by subsection (b)."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

Section 503, Water Resources Development Act of 1992, as amended.

Sediment Survey and Monitoring

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL
SUBCHAPTER I - RESEARCH AND RELATED PROGRAMS**

Sec. 1271. Sediment Survey and Monitoring

(a) Survey

(1) In general

The Administrator, in consultation with the Administrator of the National Oceanic and Atmospheric Administration and the Secretary, shall conduct a comprehensive national survey of data regarding aquatic sediment quality in the United States. The Administrator shall compile all existing information on the quantity, chemical and physical composition, and geographic location of pollutants in aquatic sediment, including the probable source of such pollutants and identification of those sediments which are contaminated pursuant to section 501(b)(4).

(FOOTNOTE 1) See References in Text note below.

(2) Report

Not later than 24 months after October 31, 1992, the Administrator shall report to the Congress the findings, conclusions, and recommendations of such survey, including recommendations for actions necessary to prevent contamination of aquatic sediments and to control sources of contamination.

(b) Monitoring

(1) In general

The Administrator, in consultation with the Administrator of the National Oceanic and Atmospheric Administration and the Secretary, shall conduct a comprehensive and continuing program to assess aquatic sediment quality. The program conducted pursuant to this subsection shall, at a minimum -

(A) identify the location of pollutants in aquatic sediment;

(B) identify the extent of pollutants in sediment and those sediments which are contaminated pursuant to section 501(b)(4);

(FOOTNOTE 1)

(C) establish methods and protocols for monitoring the physical, chemical, and biological effects of pollutants in aquatic sediment and of contaminated sediment;

(D) develop a system for the management, storage, and dissemination of data concerning aquatic sediment quality;

(E) provide an assessment of aquatic sediment quality trends

over time;

(F) identify locations where pollutants in sediment may pose a threat to the quality of drinking water supplies, fisheries resources, and marine habitats; and

(G) establish a clearing house for information on technology, methods, and practices available for the remediation, decontamination, and control of sediment contamination.

(2) Report

The Administrator shall submit to Congress a report on the findings of the monitoring under paragraph (1) on the date that is 2 years after the date specified in subsection (a)(2) of this section and biennially thereafter.

SOURCE

(Pub. L. 102-580, title V, Sec. 503, Oct. 31, 1992, 106 Stat. 4865.)

REFERENCES IN TEXT

Section 501(b)(4), referred to in subsecs. (a)(1) and (b)(1)(B), means section 501(b)(4) of Pub. L. 102-580, which is set out below.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992 and also as part of the National Contaminated Sediment Assessment and Management Act, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

AVAILABILITY OF CONTAMINATED SEDIMENTS INFORMATION

Section 327 of Pub. L. 102-580 directed Secretary to conduct national study on information that was currently available on contaminated sediments of surface waters of United States and compile information obtained for the purpose of identifying location and nature of contaminated sediments and, not later than 1 year after Oct. 31, 1992, to transmit to Congress a report on the results of the study.

NATIONAL CONTAMINATED SEDIMENT ASSESSMENT AND MANAGEMENT; SHORT TITLE; DEFINITIONS; TASK FORCE

Sections 501 and 502 of title V of Pub. L. 102-580 provided that:

"SEC. 501. SHORT TITLE AND DEFINITIONS.

"(a) Short Title. - This title (enacting this section, amending sections 1412 to 1416, 1420, and 1421 of this title, and enacting provisions set out below) may be cited as the 'National

Contaminated Sediment Assessment and Management Act'.

"(b) Definitions. - For the purposes of sections 502 and 503 of this title (enacting this section and provisions set out below) -

"(1) the term 'aquatic sediment' means sediment underlying the navigable waters of the United States;

"(2) the term 'navigable waters' has the same meaning as in section 502(7) of the Federal Water Pollution Control Act (33 U.S.C. 1362(7));

"(3) the term 'pollutant' has the same meaning as in section 502(6) of the Federal Water Pollution Control Act (33 U.S.C. 1362(6)); except that such term does not include dredge spoil, rock, sand, or cellar dirt;

"(4) the term 'contaminated sediment' means aquatic sediment which -

"(A) contains chemical substances in excess of appropriate geochemical, toxicological or sediment quality criteria or measures; or

"(B) is otherwise considered by the Administrator to pose a threat to human health or the environment; and

"(5) the term 'Administrator' means the Administrator of the Environmental Protection Agency.

"SEC. 502. NATIONAL CONTAMINATED SEDIMENT TASK FORCE.

"(a) Establishment. - There is established a National Contaminated Sediment Task Force (hereinafter referred to in this section as the 'Task Force'). The Task Force shall -

"(1) advise the Administrator and the Secretary in the implementation of this title;

"(2) review and comment on reports concerning aquatic sediment quality and the extent and seriousness of aquatic sediment contamination throughout the Nation;

"(3) review and comment on programs for the research and development of aquatic sediment restoration methods, practices, and technologies;

"(4) review and comment on the selection of pollutants for development of aquatic sediment criteria and the schedule for the development of such criteria;

"(5) advise appropriate officials in the development of guidelines for restoration of contaminated sediment;

"(6) make recommendations to appropriate officials concerning practices and measures -

"(A) to prevent the contamination of aquatic sediments; and

"(B) to control sources of sediment contamination; and

"(7) review and assess the means and methods for locating and

constructing permanent, cost-effective long-term disposal sites for the disposal of dredged material that is not suitable for ocean dumping (as determined under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) (also 16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 2801 et seq.)).

"(b) Membership. -

"(1) In general. - The membership of the Task Force shall include 1 representative of each of the following:

"(A) The Administrator.

"(B) The Secretary.

"(C) The National Oceanic and Atmospheric Administration.

"(D) The United States Fish and Wildlife Service.

"(E) The Geological Survey (now United States Geological Survey).

"(F) The Department of Agriculture.

"(2) Additional members. - Additional members of the Task Force shall be jointly selected by the Administrator and the Secretary, and shall include -

"(A) not more than 3 representatives of States;

"(B) not more than 3 representatives of ports, agriculture, and manufacturing; and

"(C) not more than 3 representatives of public interest organizations with a demonstrated interest in aquatic sediment contamination.

"(3) Cochairmen. - The Administrator and the Secretary shall serve as cochairmen of the Task Force.

"(4) Clerical and technical assistance. - Such clerical and technical assistance as may be necessary to discharge the duties of the Task Force shall be provided by the personnel of the Environmental Protection Agency and the Army Corps of Engineers.

"(5) Compensation for additional members. - The additional members of the Task Force selected under paragraph (2) shall, while attending meetings or conferences of the Task Force, be compensated at a rate to be fixed by the cochairmen, but not to exceed the daily equivalent of the base rate of pay in effect for grade GS-15 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which they are engaged in the actual performance of duties

vested in the Task Force. While away from their homes or regular places of business in the performance of services for the Task Force, such members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

"(c) Report. - Within 2 years after the date of the enactment of this Act (Oct. 31, 1992), the Task Force shall submit to Congress a report stating the findings and recommendations of the Task Force."

AUTHORIZATION OF APPROPRIATIONS

Section 509(b) of Pub. L. 102-580 provided that: "There is authorized to be appropriated to the Administrator to carry out sections 502 and 503 (enacting this section and provisions set out above) such sums as may be necessary."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

Section 206, Water Resources Development Act of 1996, as amended.

Aquatic Ecosystem Restoration

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

Sec. 2330. Aquatic Ecosystem Restoration

(a) General authority

The Secretary may carry out an aquatic ecosystem restoration and protection project if the Secretary determines that the project -

- (1) will improve the quality of the environment and is in the public interest; and
- (2) is cost-effective.

(b) Cost sharing

- (1) IN GENERAL, Non-Federal interests shall provide 35 percent of the cost of construction of any project carried out under this section, including provision of all lands, easements, rights-of-way, and necessary relocations.
- (2) FORM- Before October 1, 2003, the Federal share of the cost of a project under this section may be provided in the form of reimbursements of project cost.

(c) Agreements

- (1) IN GENERAL- Construction of a project under this section shall be Initiated only after a non-Federal interest has entered into a binding agreement with the Secretary to pay the non-Federal share of the costs of construction required by this section and to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project in accordance with regulations prescribed by the Secretary.
- (2) NONPROFIT ENTITIES- Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government.

(d) Cost limitation

Not more than \$5,000,000 in Federal funds may be allotted under this section for a project at any single locality.

(e) Funding

There is authorized to be appropriated to carry out this section \$25,000,000 for each fiscal year.

SOURCE

(Pub. L. 104-303, title II, Sec. 206, Oct. 12, 1996, 110 Stat.

3679.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104-303, set out as a note under section 2201 of this title.

Section 212, Water Resources Development Act of 1996, as amended.

Engineering and Environmental Innovations of National Significance

**TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER V - GENERAL PROVISIONS**

**Sec. 2313a. Engineering and Environmental Innovations of National
Significance**

(a) Surveys, plans, and studies

To encourage innovative and environmentally sound engineering solutions and innovative environmental solutions to problems of national significance, the Secretary may undertake surveys, plans, and studies and prepare reports that may lead to work under existing civil works authorities or to recommendations for authorizations.

(b) Funding

(1) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 1997 through 2000.

(2) Funding from other sources

The Secretary may accept and expend additional funds from other Federal agencies, States, or non-Federal entities for purposes of carrying out this section.

SOURCE

(Pub. L. 104-303, title II, Sec. 212, Oct. 12, 1996, 110 Stat. 3684.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104-303, set out as a note under section 2201 of this title.

Section 234, Water Resources Development Act of 1996

Interagency and International Support Authority

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CHAPTER 36 - WATER RESOURCES DEVELOPMENT SUBCHAPTER V - GENERAL PROVISIONS

Sec. 2323a. Interagency and International Support Authority

(a) In general

The Secretary may engage in activities in support of other Federal agencies or international organizations to address problems of national significance to the United States.

(b) Consultation

The Secretary may engage in activities in support of international organizations only after consulting with the Secretary of State.

(c) Use of Corps' expertise

The Secretary may use the technical and managerial expertise of the Corps of Engineers to address domestic and international problems related to water resources, infrastructure development, and environmental protection.

(d) Funding

There is authorized to be appropriated \$1,000,000 to carry out this section. The Secretary may accept and expend additional funds from other Federal agencies or international organizations to carry (FOOTNOTE 1) this section.

(FOOTNOTE 1) So in original. Probably should be followed by "out".

SOURCE

(Pub. L. 104-303, title II, Sec. 234, Oct. 12, 1996, 110 Stat. 3704.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104-303, set out as a note under section 2201 of this title.

Section 212, Water Resources Development Act of 1999

Flood Mitigation and Riverine Restoration Program

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CHAPTER 36 - WATER RESOURCES DEVELOPMENT SUBCHAPTER V - GENERAL PROVISIONS

Sec. 2332e. Flood Mitigation and Riverine Restoration Program

(a) In general

The Secretary may undertake a program for the purpose of conducting projects to reduce flood hazards and restore the natural functions and values of rivers throughout the United States.

(b) Studies and projects

(1) Authority

In carrying out the program, the Secretary may conduct studies to identify appropriate flood damage reduction, conservation, and restoration measures and may design and implement projects described in subsection (a) of this section.

(2) Consultation and coordination

The studies and projects carried out under this section shall be conducted, to the maximum extent practicable, in consultation and coordination with the Federal Emergency Management Agency and other appropriate Federal agencies, and in consultation and coordination with appropriate State and local agencies and tribes.

(3) Nonstructural approaches

The studies and projects shall emphasize, to the maximum extent practicable and appropriate, nonstructural approaches to preventing or reducing flood damages.

(4) Participation

The studies and projects shall be conducted, to the maximum extent practicable, in cooperation with State and local agencies and tribes to ensure the coordination of local flood damage reduction or riverine and wetland restoration studies with projects that conserve, restore, and manage hydrologic and hydraulic regimes and restore the natural functions and values of floodplains.

(c) Cost-sharing requirements

(1) Studies

Studies conducted under this section shall be subject to cost sharing in accordance with section 2215 of this title.

(2) Environmental restoration and nonstructural flood control projects

(A) In general

The non-Federal interests shall pay 35 percent of the cost of any environmental restoration or nonstructural flood control project carried out under this section.

(B) Items provided by non-Federal interests

The non-Federal interests shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for such projects.

(C) Credit

The value of such land, easements, rights-of-way, dredged material disposal areas, and relocations shall be credited toward the payment required under this paragraph.

(3) Structural flood control projects

Any structural flood control projects carried out under this section shall be subject to cost sharing in accordance with section 2213(a) of this title.

(4) Operation and maintenance

The non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section.

(d) Project justification

(1) In general

Notwithstanding any other provision of law or requirement for economic justification established under section 1962-2 of title 42, the Secretary may implement a project under this section if the Secretary determines that the project -

(A) will significantly reduce potential flood damages;

(B) will improve the quality of the environment; and

(C) is justified considering all costs and beneficial outputs of the project.

(2) Establishment of selection and rating criteria and policies

(A) In general

Not later than 180 days after August 17, 1999, the Secretary, in cooperation with State and local agencies and tribes, shall-

(i) develop, and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, criteria for selecting and rating projects to be carried out under this section; and

(ii) establish policies and procedures for carrying out the studies and projects undertaken under this section.

(B) Criteria

The criteria referred to in subparagraph (A)(i) shall include, as a priority, the extent to which the appropriate

State government supports the project.

(e) Priority areas

In carrying out this section, the Secretary shall examine appropriate locations, including -

- (1) Pima County, Arizona, at Paseo De Las Iglesias and Rillito

River;

- (2) Coachella Valley, Riverside County, California;
- (3) Los Angeles and San Gabriel Rivers, California;
- (4) Murrieta Creek, California;
- (5) Napa River Valley watershed, California, at Yountville, St.

Helena, Calistoga, and American Canyon;

- (6) Santa Clara basin, California, at Upper Guadalupe River and Tributaries, San Francisquito Creek, and Upper Penitencia Creek;

- (7) Pond Creek, Kentucky;

(8) Red River of the North, Minnesota, North Dakota, and South Dakota;

- (9) Connecticut River, New Hampshire;

- (10) Pine Mount Creek, New Jersey;

- (11) Southwest Valley, Albuquerque, New Mexico;

- (12) Upper Delaware River, New York;

- (13) Briar Creek, North Carolina;

- (14) Chagrin River, Ohio;

- (15) Mill Creek, Cincinnati, Ohio;

- (16) Tillamook County, Oregon;

- (17) Willamette River basin, Oregon;

(18) Blair County, Pennsylvania, at Altoona and Frankstown Township;

- (19) Delaware River, Pennsylvania;

- (20) Schuylkill River, Pennsylvania;

- (21) Providence County, Rhode Island;

- (22) Shenandoah River, Virginia;

- (23) Lincoln Creek, Wisconsin; and

- (24) Perry Creek, Iowa;

- (25) Lester, ST. Louis, East Savanna, and Floodwood Rivers, Duluth, Minnesota;

- (26) Lower Hudson River and tributaries, New York;

- (27) Susquehanna River watershed, Bradford County, Pennsylvania; and

- (28) Clear Creek, Harris, Galveston, and Brazoria Counties, Texas.

(f) Program review

- (1) In general

The program established under this section shall be subject to an independent review to evaluate the efficacy of the program in achieving the dual goals of flood hazard mitigation and riverine restoration.

- (2) Report

Not later than April 15, 2003, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the findings of the review conducted under this subsection with any recommendations concerning continuation of the program.

(g) Maximum Federal cost per project

Not more than \$30,000,000 may be expended by the United States on any single project under this section.

(h) Procedure

(1) All projects

The Secretary shall not implement any project under this section until -

(A) the Secretary submits to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a written notification describing the project and the determinations made under subsection (d)(1) of this section; and

(B) 21 calendar days have elapsed after the date on which the notification was received by the committees.

(2) Projects exceeding \$15,000,000

(A) Limitation on appropriations

No appropriation shall be made to construct any project under this section the total Federal cost of construction of which exceeds \$15,000,000 if the project has not been approved by resolutions adopted by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(B) Report

For the purpose of securing consideration of approval under this paragraph, the Secretary shall submit a report on the proposed project, including all relevant data and information on all costs.

(i) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section -

(A) \$20,000,000 for fiscal year 2001;

(B) \$30,000,000 for fiscal year 2002; and

(C) \$50,000,000 for each of fiscal years 2003 through 2005.

(2) Full funding

All studies and projects carried out under this section from Army Civil Works appropriations shall be fully funded within the program funding levels provided in this subsection.

SOURCE

(Pub. L. 106-53, title II, Sec. 212, Aug. 17, 1999, 113 Stat. 288.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106-53, set out as a note under section 2201 of this title.

SEC. 729. WATERSHED AND RIVER BASIN ASSESSMENTS.

NOTE: This section contained in Section 202 of the Water Resources Development Act of 2000 and had not been added to the U.S. Code as of the time of preparation of this list.

Section 729 of the Water Resources Development Act of 1986 (100 Stat. 4164) is amended to read as follows:

“SEC. 729. WATERSHED AND RIVER BASIN ASSESSMENTS.

“(a) IN GENERAL.—The Secretary may assess the water resources needs of river basins and watersheds of the United States, including needs relating to—

- “(1) ecosystem protection and restoration;**
- “(2) flood damage reduction;**
- “(3) navigation and ports;“(4) watershed protection;**
- “(5) water supply; and**
- “(6) drought preparedness.**

“(b) COOPERATION.—An assessment under subsection (a) shall be carried out in cooperation and coordination with—

- “(1) the Secretary of the Interior;**
- “(2) the Secretary of Agriculture;**
- “(3) the Secretary of Commerce;**
- “(4) the Administrator of the Environmental Protection Agency; and**
- “(5) the heads of other appropriate agencies.**

“(c) CONSULTATION.—In carrying out an assessment under sub-section (a), the Secretary shall consult with Federal, tribal, State, interstate, and local governmental entities.

“(d) PRIORITY RIVER BASINS AND WATERSHEDS.—In selecting river basins and watersheds for assessment under this section, the Secretary shall give priority to—

- “(1) the Delaware River basin;**
- “(2) the Kentucky River basin;**
- “(3) the Potomac River basin;**
- “(4) the Susquehanna River basin; and**
- “(5) the Willamette River basin.**

“(e) ACCEPTANCE OF CONTRIBUTIONS.—In carrying out an assessment under subsection (a), the Secretary may accept contributions, in cash or in kind, from Federal, tribal, State, interstate, and local governmental entities to the extent that the Secretary determines that the contributions will facilitate completion of the assessment.

“(f) COST-SHARING REQUIREMENTS.—

“(1) NON-FEDERAL SHARE.—The non-Federal share of the costs of an assessment carried out under this section shall be 50 percent.

“(2) CREDIT.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may credit toward the non-Federal share of an assessment under this section the cost of services, materials, supplies, or other in-kind contributions provided by the non-Federal interests for the assessment.

“(B) MAXIMUM AMOUNT OF CREDIT.—The credit under subparagraph (A) may not exceed an amount equal to 25 percent of the costs of the assessment.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$15,000,000.”.